



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC491]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application; for an Enhancement of Survival Permit for a Programmatic Safe Harbor Agreement to Enhance Summer Streamflow in Coastal California Creeks and Rivers.

SUMMARY: We, NMFS's West Coast Region (WCR), announce receipt of an application for an enhancement of survival permit (Number 25838) under the Endangered Species Act (ESA) of 1973, and proposed entry into an associated Programmatic Safe Harbor Agreement (PSHA) between the NOAA Restoration Center (Applicant) and NMFS-WCR. The proposed enhancement of survival permit, which is issued by NMFS-WCR, and PSHA is intended to improve habitat conditions and promote the conservation and recovery of seven species of ESA-listed salmonids in Coastal California.

DATES: Comments or requests for a public hearing on the actions proposed in the application must be received at the appropriate address or fax number (see

ADDRESSES) no later than 5 p.m. Pacific standard time on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Written comments on the application should be submitted to the California Coastal Office, NMFS, 777 Sonoma Avenue, Santa Rosa, CA 95404.

Comments may also be submitted via fax to (707) 578-3435, or by email to:

programmaticflowsha.wcr@noaa.gov (include the permit numbers in the subject line of the fax or email).

FOR FURTHER INFORMATION CONTACT: Jodi Charrier, Santa Rosa, CA (ph.: 707-575-6069; Fax: 707-578-3435) e-mail: programmaticflowsha.wcr@noaa.gov. The permit application is available upon request through the contact information above, or online at <https://apps.nmfs.noaa.gov>.

SUPPLEMENTARY INFORMATION:

Species Covered in this Notice

The following ESA-listed species (Covered Species) are covered in this notice:

- Coho salmon (*Oncorhynchus kisutch*) – Central California Coast (CCC) and Southern Oregon/Northern California Coast (SONCC)
- Chinook salmon (*O. tshawytscha*). - California Coastal (CC)
- Steelhead (*O. mykiss*) - Central California Coast (CCC), Northern California (NC), South-Central California Coast (S-CCC), and Southern California Coast (SCC)

Authority

Enhancement of survival permits are issued in accordance with Section 10(a)(1)(A) of the ESA (16 U.S.C. 1539(a)(1)(A)) and regulations governing listed fish and wildlife permits (50 CFR part 222, subpart C). NMFS-WCR issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; (3) are consistent with the purposes and policies of Section 2 of the ESA; (4) would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species; and additional issuance criteria (as listed at 50 CFR 222.308(c)(5) through (12)). The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see

ADDRESSES). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Permit Application Received

The Applicant is requesting an enhancement of survival permit (ESP) and execution of an associated PSHA. The PSHA would have a term of 10 years and exclusively cover streamflow augmentation by local government or private landowners during the late spring, summer, and early fall utilizing off-channel water sources, such as storage ponds or groundwater wells. The covered area would include all California coastal waterways draining to the Pacific Ocean (excluding the Sacramento and San Joaquin rivers). The Applicant would receive the ESP, and extend a Certificate of Inclusion to interested landowners that qualify under the PSHA. To obtain a Certificate of Inclusion, a landowner would need to enter into a cooperative agreement with the Applicant and adopt an annual plan, monitoring regimes, and agree to provide post-project summaries. The issuance of a Certificate of Inclusion would not preclude the need for the landowners to abide by all other applicable Federal, State, and local laws and regulations. In order to be eligible for a Certificate of Inclusion, landowners must meet all criteria and agree to the terms outlined in the PSHA.

The ESP would authorize incidental take that may occur as a result of implementing the PSHA. Management activities outlined in Section 9 of the PSHA could harm, kill, or cause the capture of Covered Species through stranding caused by unanticipated interruptions in flow augmentation, or water quality degradation resulting from poor source water. Water Releases could cause take in the form of harassment, direct mortality, or injury to juvenile life stages of the Covered Species by disrupting feeding behavior or migration behavior, or stranding, or causing other behavior modifications. Also, when the landowner returns their property subject to the PSHA (Enrolled Property) to baseline conditions (defined as the natural streamflow without

supplementation) as specified in the PSHA, dewatering and relocation activities could harm or kill individuals of the covered species. NMFS-WCR anticipates that incidental take will be unlikely and will only occur should unforeseeable or unavoidable circumstances arise. The risk of such incidental take would be further avoided or minimized through implementation of the measures outlined in Section 12 of the PSHA.

This PSHA is expected to provide a net conservation benefit for the Covered Species and contribute, either directly or indirectly, to the recovery of the Covered Species, which supports the issuance of an ESP by NMFS-WCR pursuant to Section 10(a)(1)(A) of the ESA in accordance with 50 CFR 222.308. Management activities are expected to benefit the Covered Species by increasing smolt emigration, juvenile migration, and redistribution success, and improving juvenile rearing habitat. These benefits are expected to ultimately increase the population abundance and distribution of the Covered Species.

Under U.S. Fish and Wildlife Service and NMFS' joint Safe Harbor Policy (64 FR 32717, June 17, 1999), safe harbor agreements provide incentives to property owners to restore, enhance, or maintain habitats and/or populations of listed species that result in a net conservation benefit to these species. Under the policy, landowners are provided certainty relative to future property-use restrictions, even if their conservation efforts attract listed species onto enrolled properties or increase the numbers or distribution of listed species already present. Subject to specifications in the relevant documents, these regulatory assurances allow the landowners to alter or modify enrolled property, even if such alteration or modification results in the incidental take of a listed species to such an extent that it returns the species back to the originally agreed upon baseline conditions.

Upon approval of the PSHA and consistent with the safe harbor policy, NMFS-WCR will issue an ESP to the applicant. The ESP will authorize the Applicant (and, here, landowners approved for a Certificate of Inclusion) to take covered species incidental to

the implementation of the activities specified in the cooperative agreements, annual plans, and PSHA, incidental to other lawful uses of the enrolled properties, and to return to present baseline and elevated baseline conditions, if specified. In addition to meeting other criteria, actions to be performed under the enhancement of survival permit must not jeopardize the existence of ESA-listed species.

National Environmental Policy Act

Issuance of an ESA section 10(a)(1)(A) permit constitutes a Federal action requiring NMFS-WCR to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500 through 1508 and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Policy Act (1999). NMFS will evaluate the application(s) and determine the level of NEPA analysis needed for this action.

Public Comments Solicited

NMFS-WCR invites the public to comment, including any written data, views, or arguments, on the permit application during a 30-day public comment period beginning on the date of this notice. This notice is provided pursuant to Section 10(c) of the ESA (16 U.S.C. 1539(c)), 50 CFR 222.303. All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public. We provide this notice in order to allow the public, agencies, or other organizations to review and comment on these documents.

Next Steps

NMFS-WCR will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of Section 10(a)(1)(A) of the ESA and its implementing regulations. The final permit decision will not be made until after the end of the 30-day public comment period and after NMFS-WCR has fully considered all relevant comments received. NMFS-WCR will also meet

other legal requirements prior to taking final action, including compliance with Section 7 of the ESA. NMFS-WCR will publish notice of its final action in the **Federal Register**.

Dated: October 20, 2022.

Angela Somma,

Chief, Endangered Species Division,

Office of Protected Resources, National Marine Fisheries Service.

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